

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

UNITED STATES OF AMERICA)
)
)
v.) **No. 3:03cr0057-1 AS**
)
RALPH D. BERKEY, JR.)

MEMORANDUM, OPINION AND ORDER

This court takes full judicial notice of the record in this case since its inception on or about June 12, 2003. Of particular moment are the sentencing proceedings on December 10, 2004 and the sentencing memorandum entered that day. What is before this court now is a motion for sentence modification filed pro se by Ralph D. Berkey, Jr. on December 27, 2006. This defendant has had a sequence of very able lawyers representing him throughout the earlier proceedings in this case. This court is mandated to greatly indulge *pro se* plaintiffs. *See Haines v. Kerner*, 404 U.S. 519 (1972). *See also Smith v. Fairman*, 862 F.2d 630 (7th Cir. 1988), *cert. denied*, 490 U.S. 1008 (1989); and *Cain v. Lane*, 857 F.2d 1139 (7th Cir. 1988). This court is familiar with the mandates of *Houston v. Lack*, 487 U.S. 266 (1988).

With all deference and due respect, the filing for relief here under Rule 35, Federal Rules of Criminal Procedure, is simply out of time. Nothing was done to waive that time rule and the same must be said under 28 U.S.C. §2255. *See United States v. Smith*, 438 F.3d 798 (7th Cir. 2000). Neither does this petitioner-defendant benefit from the provisions of 18 U.S.C. §3582. The long and short of it is that this court is without authority to entertain the

aforesaid motion for sentence modification filed pro se by Ralph D. Berkey, Jr. Therefore, such is now considered and **DENIED. IT IS SO ORDERED.**

DATED: March 9, 2007

S/ ALLEN SHARP
ALLEN SHARP, JUDGE
UNITED STATES DISTRICT COURT
